

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 7, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Ann Bleed, Steve Duvall, Barbara Hopkins, Gerry Krieser, Greg Schwinn and Rick Wallace (Russ Bayer, Cecil Steward and Joe Wilson absent); John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held March 24, 1999. Motion to approve made by Bleed, seconded by Schwinn and carried 5-0: Bleed, Duvall, Hopkins, Schwinn, and Wallace voting 'yes'; Krieser abstaining; Bayer, Steward and Wilson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Hopkins, Krieser, Schwinn and Wallace; Bayer, Steward and Wilson absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 2938A; CHANGE OF ZONE NO. 3172; SPECIAL PERMIT NO. 450M; PRELIMINARY PLAT NO. 99004, HIGHLANDS NORTHWEST; FINAL PLAT NO. 98018, PIONEER GREENS ADDITION; AND FINAL PLAT NO. 98040, COUNTRY VIEW ESTATES ADDITION.**

Schwinn moved to approve the Consent Agenda, seconded by Wallace and carried 6-0: Bleed, Duvall, Hopkins, Krieser, Schwinn and Wallace voting 'yes'; Bayer, Steward and Wilson absent.

This is final action on Special Permit No. 450M, Pioneers Greens Addition Final Plat and Country View Estates Addition Final Plat, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

COUNTY CHANGE OF ZONE NO. 184
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT STAGECOACH ROAD AND HIGHWAY 77.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Planning staff recommendation: Denial

Proponents

1. **Mike Rierden** appeared on behalf of the applicant. Mr. Rierden indicated that this is one of those unusual circumstances where he agrees with everything staff says with the exception of the conclusion and recommendation of denial. The zoning criteria were put into the Comprehensive Plan to assist the Commission in situations where the land use map does not identify the property as being in conformance. The zoning criteria starts with infrastructure and all the way through, staff agrees that this proposal falls under and complies with the seven zoning criteria. There is rural water district available to the property; the groundwater is good in this particular area; the developer would utilize individual septic systems or other types of sewage systems that would be allowed by the Health Dept.

Compatibility is the only criteria that staff recommends this application does not meet. Staff submits that this acreage development would not be compatible with AG uses in the area. Mr. Rierden submits that this is in the eye of the beholder. He believes acreage residents know they will have agricultural uses nearby. Notification will be given to the property owners as to the various types of agricultural uses that could occur; there are no safety hazards; the topography is good for acreage development. With regard to accessibility, the property is in close proximity to Hwy 77 and Stagecoach Road with good vehicular access. With regard to open space, the property is close to Stagecoach Lake. There are no adverse fiscal impacts; there would be positive fiscal impacts as far as the tax structure is concerned.

Mr. Rierden believes that staff is really suggesting that the proposal complies with the 7 zoning criteria. One item that is of concern is the amount of floodplain in the area. At this point in time, the County Engineer could not support this proposal unless a plat came along to show what the development might look like. The applicant is not at the stage where they have a plat to bring forward; however, there will be the opportunity for review of the plat and they will comply with all floodplain regulations.

Bleed focused upon the idea of conflict between acreages and agricultural uses. What criteria could be used to make sure there are no conflicts? Mr. Rierden stated that as a

purchaser of an acreage in a rural area, he would do his due diligence in checking on the uses, the surrounding zoning, etc. For example, Mr. Rierden has previously advised his clients to give prospective purchasers notice as to the types of uses that are allowed in AG zoning. Advance notification is the best policy. Mr. Rierden believes the compatibility issue is in the eye of the beholder. He believes most acreage residents are aware that they will be in a rural area where agricultural uses might be in place. He believes acreage development is compatible with agricultural uses.

Schwinn pointed out that the property is bounded by Hwy 77 and the railroad, which he believes buffers the property. He asked whether this is the only parcel that the applicant owns. Mr. Rierden stated that as far as he knows, it is the only parcel owned by the applicant, and he is not aware that they will be adding any property to it. Schwinn would like to see the preliminary plat at the same time as the change of zone. Mr. Rierden explained that it's a matter of spending the additional funds to hire an engineer and architect to put the plat together before they have any assurance of the change of zone. Schwinn believes the Commission is granting speculative zoning not knowing what the plat will look like. He is uncomfortable with this.

There was no testimony in opposition.

Wallace inquired of staff as to the probability of bringing this property into the Comprehensive Plan. Mike DeKalb of Planning staff stated that there are no plans to bring this property in. The Comprehensive Plan attempts to cluster the acreages together to consolidate services. We have not stripped Hwy 77. The review criteria is designed to assist in making distinctions. He would not expect that this property would come up as an area for consideration for AGR. This property is not close to any other designated AGR areas. This applicant has 5 existing lots which can be adjusted and reconfigured for five units with those five units being outside of the floodplain. There are hazards due to the railroad track and highway.

Bleed again noted that the issue of compatibility with AG uses is something that concerns her. How do you develop criteria to determine whether something is compatible? Mr. DeKalb advised that there is a long history of conflicts between farming and acreages. When the farm is in operation, there is some hazard to the occupants in the residential area. Bleed would like to have it noted in the County Comprehensive Plan that it would be preferable not to mix AG and residential uses.

Schwinn asked for an explanation of the history of these lots. Mr. DeKalb stated that prior to the mid-60's, the county was not enforcing subdivisions. Until 1980, you didn't have to come through the process to create parcels of 5 acres or larger. He presumes that these lots are grandfathered and could be used for adjustment of pre-existing lots. They have permission to do five lots or to reconfigure the five. The property is in the Salt Creek drainage basin.

Schwinn commented that it seems that lots of times we get in these situations where we talk about being in the floodplain, but this appears to be pretty high up in the watershed. Where do we come up with the floodplain? Mr. DeKalb explained that the floodplain is coming off of the basin. In this particular case, there are six square miles draining into the dam and the floodplain is determined by the FEMA calculations. It is a designated floodplain going through this area.

Hopkins inquired about the supply of acreage lots in the county. Mr. DeKalb stated that there have been some previous studies showing that we have 1500-1600 vacant lots in Lancaster County; the areas that are now being approved for AGR are generating about 240 lots per square mile.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 7, 1999

Bleed moved to deny, seconded by Krieser.

Bleed believes the questions and answers are fairly explanatory of what's going on. The property is not on the Comprehensive Plan land use map; the plan is to somehow clump the low density AGR around lakes or the towns and that is not the case here; there are some floodplain issues on this property; she is assuming that the basic presumption of the land use plan for the county is that AG and AGR are not necessarily compatible and that it is better to keep them somewhat separate as opposed to mixing.

Hopkins indicated that she had asked the question about supply because it is important to know whether there is a heavy pent-up need for this type of development and whether this is the right place. She does not believe this is the right place.

Motion to deny failed 4-2: Bleed, Wallace, Schwinn and Hopkins voting 'yes'; Duvall and Krieser voting 'no'; Steward, Bayer and Wilson absent.

This item is held over for administrative action on April 21, 1999. Public hearing has been closed.

COUNTY CHANGE OF ZONE NO. 185
FROM AG AGRICULTURAL TO B BUSINESS
ON PROPERTY GENERALLY LOCATED
AT N.W. 70TH STREET AND WEST AGNEW ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Planning staff recommendation: Approval.

Proponents

1. **Mary Benes**, the applicant, advised that the Planning Department came up with this option which is a better location for everyone involved. It is located right outside of Agnew and is more feasible for everyone. They will comply with the Health Department requirements.

There was no testimony in opposition.

Hopkins expressed appreciation to the staff for working towards a good solution.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 7, 1999

Duvall moved approval, seconded by Wallace and carried 6-0: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins voting 'yes'; Steward, Bayer and Wilson absent.

CHANGE OF ZONE NO. 3170
FROM B-1 BUSINESS TO R-4 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED AT
SOUTH 26TH & SUMNER STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Planning staff recommendation: Approval.

Proponents

1. Jay DeGraw, owner of the property, testified that he has made this request in order to make the property into a duplex. He lives in the existing house and had been using it as a duplex and did not realize it was not in accordance with the zoning. He does not believe it will change anything in the neighborhood. He is surrounded by duplexes to the north and in the area. The north side of the street was used for a trolley in the past.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 7, 1999

Duvall moved approval, seconded by Bleed and carried 6-0: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins voting 'yes'; Steward, Bayer and Wilson absent.

**COMBINED USE PERMIT/SPECIAL PERMIT NO. 11C
TO INCREASE THE ALLOWABLE BUILDING AREA
AND THE LIMITATION ON BUILDING HEIGHT
O PROPERTY GENERALLY LOCATED AT
SOUTH 27TH STREET AND PINE LAKE ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Planning staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted a letter from the Porter Ridge Neighborhood Assn., which neighborhood is located to the south, asking that the height limit be approved specifically and only for the new building proposed to be north of Bed, Bath and Beyond and not for the entire shopping center.

Mr. Henrichsen also submitted a letter from Phil White on behalf of Southern Hills Neighborhood Assn., which will be discussed during public testimony.

Proponents

1. Mark Palmer of Olsson Associates distributed plans for the proposed building. This is a request to amend the use permit to allow 730,000 sq. ft. and they have worked with staff on the requirements. The height issue is for the proposed building which will be located north of the Bed, Bath and Beyond building, on 30th Street. The applicant has requested a variance for an architectural feature which stands approximately 65' high and is a main attraction for the building, but strictly architectural. The applicant did meet with the neighbors last night.

2. Dan Lowe, of RED, explained that the height variance requested would take one architectural feature in the building and raise it from the 40' building height limit today to 65'. If you look at the elevations you will find that the peak of the tower from the east of the building to the west of the building is the only element in the building that would be 65' high. This is the tenant's prototype building and the reason they do this is because they feature a simulated redwood tree inside the building. It is a new prototype and very important to the tenant.

Mr. Lowe advised that the applicant did meet with the neighborhood associations last night, including Porter Ridge and Southern Hills. They had received a letter from Southern Hills with regards to other parts of the development. They have dealt with each of the issues and he believes they have satisfied the neighbors on each issue. A major concern is the lighting and they have already had a discussion with their electrical engineer about the possibility of putting shields on the lights so that the bulbs do not protrude from the fixture to reduce the glare. Mr. Lowe believes they have attempted to address all of the concerns of the neighbors and would appreciate support for this amendment.

3. Phil White, 2815 Laredo Drive, President of Southern Hills Neighborhood Assn., testified in support and believes they have everything worked out with the developer and the neighborhood does now support this change.

There was no testimony in opposition.

Bleed noted that one of the letters requests that the amendment be restricted to just this building. Do the conditions take care of this? Mr. Henrichsen advised that the condition as written restricts it to all of the buildings that are a part of the main shopping center, referring to the site plan. That does not include the Von Maur department store or the lot for the theater. This includes the main buildings along the central landscape corridor. Since they are at least 300' from all of the buildings to any residential area, staff believes the variance to the height is acceptable. It only applies to the buildings in the shopping center—not to the pad sites or the 120,000 sq. ft. of retail space underway to the east.

Bleed asked staff to respond to the concerns about the lighting. She has heard a lot of complaints about light pollution from the shopping center. Could we amend the special permit to deal with the lighting issues? Mr. Henrichsen did not have any information that the lighting standard is something other than what is allowed by our ordinance today and staff would not be looking to restrict it further than what is allowed.

John Bradley, Director of Planning, advised that one should not be able to see the luminare from off-site at all. Those standards were reviewed by LES and if they were installed other than what was approved, then it would not meet the requirements.

Public hearing was closed.

Bleed moved to approve the Planning staff recommendation of conditional approval, seconded by Duvall.

Duvall noted that the applicant had referred to a height of 65' and the staff report reflects 60'. Mr. Henrichsen stated that staff understood that the application was for 60' and this is how it was advertised. As advertised, it can only be approved for 60'.

Motion for conditional approval carried 6-0: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins voting 'yes'; Steward, Bayer and Wilson absent.

CHANGE OF ZONE NO. 3164
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE TO ALLOW
TEMPORARY PAVING PLANTS INSIDE THE
CITY.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Ray Hill of Planning staff submitted revised text that all parties have agreed upon. The staff and applicant have had several more meetings to reach this agreement.

Proponents

1. Mark Hunzeker appeared on behalf of **Tony's Cement Works**. This revised language will allow for a limited time permit that can be issued administratively by the Planning Director for a concrete batch plant. In order to be approved, it must be located within a mile of a project of at least 3,000 cu. yards of concrete. The Planning Director will have discretion to increase that radius up to 2 miles to avoid using local streets or other cited circumstances. A site plan must be submitted showing the site of the plant, and a dust control and suppression plan, including the plant operations and the haul roads to and from the plant; they also need to include a statement about hours of operation and include in the application a copy of the contract that indicates that the applicant does in fact have a contract for 3,000 cu. yards on a particular project or more, including the dates of completion. The permit will run to date of completion as stated in the application, or December 31st of the year issued, whichever is earlier. If it runs past the end of the year it has to be renewed. The plant must stay at least 300' from occupied dwellings, or school or any other noise sensitive use. Public Works and the County Engineer must approve all haul roads, for both incoming and outgoing materials. The plant has to be removed upon completion of the project and cleaned up within 30 days.

The most difficult issue has been under what circumstances can concrete be hauled from that plant to sites other than the particular project. The plant owner has to be able to keep

it in operation, but they also understand the concerns relative to creating an industrial use on land not zoned industrial. The first site will be in Vintage Heights at approximately 98th & Pine Lake Road. There could be multiple permits for this site because the radius of one or two miles from that location will have a lot of activity over the next five years or so. Again, each and every permit expires upon completion of the project or Dec 31st of that year so that it is reviewed at least once a year.

Mr. Hunzeker advised that they did use, in part, the Omaha ordinance on this same subject.

Bleed referred to the bonding requirement to guarantee cleanup of the permit site. If someone complains that this permit increases the dust in the area, how do you determine that is a violation of the conditions that should affect the bond? Mr. Hunzeker responded that the dust control aspect is going to be largely controlled by the Health Department. The County Engineer has expressed some concern relative to how they will control dust on County Roads. All of that will have to be monitored as part of the permit and if there are complaints, he is sure the Health Department will address it very quickly. This operator is not going to want to have problems with that kind of an issue due to the fact that it is very likely that there will be another application the next year, if not sooner, for the same or a nearby site.

Wallace noted that DEQ has a monitoring system for dust control so there is a process in place.

Mr. Hunzeker added that he has had great cooperation from Planning, Public Works and the County Engineer's office on this text amendment.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 7, 1999

Wallace moved approval of the text as submitted by staff today, seconded by Krieser and carried 6-0: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins voting 'yes'; Steward, Bayer and Wilson absent.

AMENDMENT NO. 94-30-11
PURSUANT TO THE 1999 COMPREHENSIVE PLAN ANNUAL REVIEW
REGARDING EAST "O" STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 1999

Members present: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins; Steward, Bayer and Wilson absent.

Jennifer Dam of Planning staff submitted a recommendation from staff for amendment to the Comprehensive Plan instead of deferral. On March 22, 1999, the City Council gave guidance and directed staff to complete an environmental analysis for widening of East "O" Street. There are three specific recommendations:

1. Amend Figure 29, "Street Design Standard," to add as Improvement Type K a nine lane cross section (six through lanes, dual lefts, and a single right turn lane) within a maximum of 140 feet of right-of-way.
2. Amend Figure 31, "Improvements for Future Road Network [1-20 Year Program,]" and Figure 32, "Improvements for Future Road Network Phase 1 [1-10 Year Program],", to show the "Street Design" as Improvement Type K, extending from 52nd Street to Wedgewood Drive; and,
3. Amend Table 10, "Transportation Projects - Year 2015," to change the description of Project 26 to reflect extension of the project one block west to 52nd Street (i.e., the commensurate change in project length), and to designate the "Improvement Type" as Type K.

Hopkins and Bleed were both interested in taking additional time to review this recommendation since it was just handed to the Planning Commission at today's meeting.

Hopkins asked whether this closes any streets or entryways to some work sites. Ms. Dam advised that the improvements might include some driveway closures, but that will not be determined until the final plans for the widening are completed, which is not part of the Comprehensive Plan amendment. The amendment is to provide a new cross-section to show the 140' of right-of-way, etc., as set forth above.

Ms. Dam further explained that the vote of the Commission approving this Comprehensive Plan amendment would allow the increase in the width of the right-of-way to 140'. Currently, in the transportation section of the Comprehensive Plan, on Figure 29, the arterial design standards show a D+ cross-section with a maximum cross-section of 120' of right-of-way. The proposed amendment would be for 140' of right-of-way and would increase the number of thru lanes from 5 to 6 and incorporates a dedicated right-turn-lane as well.

There was no testimony in opposition.

Bleed moved to continue public hearing and administrative action on 4/21/99, seconded by Duvall.

Bleed believes the Commission needs time to review the revised recommendation. This is an important change to the Comprehensive Plan because we are putting in potential for much wider intersections. It's not just "O" Street that we are talking about.

Motion for continued public hearing and administrative action on 4/21/99 carried 6-0: Bleed, Duvall, Wallace, Krieser, Schwinn and Hopkins voting 'yes'; Bayer, Steward and Wilson absent.

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 21, 1999.